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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement* submitted by the Palestinian Centre for Human Rights (PCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Palestinian Centre for Human Rights (PCHR) and LAW, the Palestinian Society for the Protection of Human Rights and the Environment (LAW) express their grave concern at the increasing prevalence of extrajudicial, summary, and arbitrary executions of Palestinians by Israeli occupation forces and settlers in the Occupied Palestinian Territories (OPTs), including Jerusalem.

802 Palestinians were killed by Israeli occupation forces or settlers in the OPTs, of whom 193 were children, aged under 18, between 28 September 2000 and 18 January 2002.1 These killings are part of a dramatic and unprecedented deterioration in the human rights and humanitarian situation in the OPTs. Nearly all of the deaths during this period were the result of excessive and/or indiscriminate use of force by the Israeli army, or willful killings, including assassinations. These ongoing killings are a systematic violation of Israel's obligations under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (the Fourth Geneva Convention) and the International Covenant for Civil and Political Rights (ICCPR), and other international standards. These killings generally occur in the following contexts:

Assassinations

Israeli occupation forces have killed at least 71 Palestinians as part of its policy of assassinating alleged Palestinian militants and political leaders. This policy has variously been called "targeted killing," "active self-defense," and other euphemisms by the Israeli government. Of those killed 53 were targeted individuals; 18 bystanders, including 4 children were also killed. Assassinations are carried out without recourse to even the most basic judicial process. No attempt is made to arrest these individuals, even when their arrest would have been possible. The Israeli government has not presented evidence to substantiate its allegations in any of these cases, either before or after such killings. Assassinations are carried out in circumstances that demonstrate complete disregard for human life (often through use of explosive booby traps and Apache helicopter gunships firing anti-tank missiles into civilian residential areas), as the high number of "unintended" casualties demonstrates. These killings are a gross and systematic violation of the right to life, the right to a fair trial and other international human rights standards. As willful killings they also constitute grave breaches of the Fourth Geneva Convention.

Demonstrations and "clashes"

Palestinians demonstrating against occupying forces, whether peacefully or while throwing stones, are often met by excessive and lethal force by Israeli soldiers. At least 470 Palestinians have been killed during demonstrations, the majority of them unarmed civilians. Israeli occupation forces are often positioned in well-protected fortifications, several hundred meters from demonstrators. The often immediate resort to the use of live ammunition, sometimes by highly-trained snipers, in the absence of any threat to life constitutes excessive use of force.

Shelling, shooting, and aerial bombardment

Israeli occupation forces regularly bombard Palestinian residential areas, using weaponry intended for full combat situations, including heavy-calibre machine guns, tanks, armoured vehicles, Apache helicopter gunships, and F-16 fighter jets. Israeli forces have not used

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1 This figure excludes Palestinian militants killed while carrying out attacks against Israeli occupation forces but includes individuals killed while resisting Israeli incursions into PNA-controlled areas.

combat aircraft in the OPTs since the 1967 war. At least 274 Palestinians have been killed in these circumstances. In some instances the bombardment is purportedly undertaken in response to armed attacks by Palestinians against Israeli occupying forces and settlements; at other times, air attacks have targeted Palestinian National Authority (PNA) office buildings in residential areas as a means of political pressure; at other times, no reason for such attacks can be discerned. In all instances these attacks are excessive, disproportionate, and indiscriminate.

Incursions

Israeli occupation forces have invaded areas under the jurisdiction of the PNA with increasing regularity throughout the al-Aqsa Intifada. A number of Palestinians have been killed during such attacks. As the Israeli military can and does affect all aspects of life in the OPTs – including PNA areas – it retains the legal responsibilities of an Occupying Power. This position has been repeatedly confirmed by the ICRC and the High Contracting Parties to the Fourth Geneva Convention. These operations often combine infantry units with tanks, armoured vehicles, bulldozers, and air support to invade refugee camps and villages, often while opening fire indiscriminately. Many of the Palestinians killed during incursions died as a result of indiscriminate Israeli fire. Others, in particular PNA policemen (who are still considered civilians under the Fourth Geneva Convention), have been killed while resisting such attacks. Such killings are grave breaches of the Fourth Geneva Convention (article 147).

Other willful killings

In a number of cases, Palestinian civilians have been killed by Israeli soldiers in situations of "complete quiet," i.e. in the absence of demonstrations or when no attacks have been perpetrated by Palestinians against Israeli targets. Many of these incidents involve Palestinian civilians killed by Israeli soldiers while at or near Israeli military checkpoints, and Israeli snipers killing Palestinian civilians often with a single shot; to the head or upper body; fired from a short distance; in daylight; in residential areas. Other categories of willful killings include killings of Palestinians by Israeli settlers (acting either alone or in paramilitary groups), whose presence in the OPTs is a violation of article 49 of the Fourth Geneva Convention, and alleged executions of Palestinian militants already incapacitated by wounds sustained while attacking Israeli occupation forces.

PCHR and LAW note with great concern that in the hundreds of cases of Palestinian civilians killed by Israeli occupation forces and settlers, few, if any, have undergone a full and proper investigation. PCHR and LAW do not consider that any member of the Israeli military or any other Israeli responsible for unlawful willful killings has been subjected to adequate and appropriate judicial procedures and punishment in accordance with international standards2. Moreover, no compensation has been paid to the families of victims during the current Intifada. The office of the Attorney General stated for the first time, in response to a case submitted by PCHR to the High Court of Justice, that Israel considers the Hague Convention IV, 1907, to apply to the OPTs, thereby recognising the situation as a state of war, and that according to their interpretation of this Convention, including reference to "the necessities of war", Israel bears no legal responsibility for the results of military activity, which would

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2 On 16 January 2001, Ha'aretz reported that an IDF soldier had been indicted for negligently causing the death of Fatma Abu Jeish on 7 January 2001 in the first prosecution of an Israeli soldier since the Intifada began. The soldier was charged in December 2001 in the military tribunal of the Central Command. PCHR and LAW are concerned that this prosecution be conducted in accordance with international standards and that, if found responsible by the tribunal, the soldier by given an appropriate sentence.

include to investigate such killings or to provide any form of reparation3. The systematic failure to conduct full investigations, prosecute in accordance with international standards, including with respect to appropriate punishment, and provide reparation, including adequate compensation, is a gross violation of international law and creates a regime of complete impunity within the Israeli military, settler community, and security services for the unlawful killing of Palestinian civilians. PCHR and LAW therefore calls upon

The Government of Israel

- To immediately apply all provisions of the Fourth Geneva Convention in the OPTs, de jure and de facto, and to comply with UN resolutions demanding a full withdrawal from Palestinian territories occupied in 1967.

- To immediately end its policy of assassinating Palestinians.

- To immediately cease the use of heavy military equipment in Palestinian civilian residential areas, including heavy machine guns, mortars, tanks, helicopter gunships, and warplanes.

- To immediately amend and/or enforce open-fire regulations issued to Israeli occupation forces, including civil police in occupied east Jerusalem, to ensure that lethal force is used in accordance with international legal standards.

- To effectively and appropriately investigate, prosecute, and punish all military personnel, police, and settlers suspected of unlawfully killing, or ordering the killing of, Palestinians in accordance with international standards, as required in Article 146 of the Fourth Geneva Convention.

- To take appropriate steps to adequately compensate the families of Palestinians unlawfully killed by Israeli occupation forces and settlers.

- To accept the presence of an appropriate international protection mechanism for Palestinian civilians in the OPTs and to extend full cooperation to it.

The High Contracting Parties to the Fourth Geneva Convention

- To take immediate steps to ensure Israel's de jure and de facto implementation of the Fourth Geneva Convention in the OPTs and its recognition of the Palestinian right to self-determination, including the right to establish a viable and independent state on the territories occupied in 1967.

- To immediately deploy an independent international protection presence to protect Palestinian civilians and prevent further grave breaches and other violations of the Convention and other international human rights standards in the OPTs.

- To recognize and implement the obligations of the High Contracting Parties to the Fourth Geneva Convention under Article 146 to

    - enact legislation to provide effective penal sanctions for persons committing, or

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3 A letter dated 17 January 2001, from Yehuda Shipher, Senior Assistant, the Attorney General. Case Appeal no. 9252/2000, Salah Al-Saka.

ordering to be committed, grave breaches of the Convention.

- search for and bring to trial, in accordance with international standards, persons alleged to have committed, or have ordered to be committed, grave breaches of the Convention, in conformity with the universal jurisdiction over grave breaches recognized by the Convention.

- To establish a War Crimes Tribunal to prosecute those Israelis responsible for perpetrating war crimes in the OPTs.

- To immediately end all transfers of arms and military equipment to Israel, and to pressure other states to do so.

- To immediately implement all signed agreements and domestic legislation that are contingent upon Israel's compliance with international human rights standards, including through the suspension of the Euro-Israeli Association Agreement.

- To impose economic, diplomatic, oil, trade, and other sanctions individually or collectively, in a graduated and cumulative manner (with the exception of the provision of humanitarian goods and services).

- To restrict bilateral trade relations with Israel regarding the import of products made in Israeli settlements in the OPTs.